XII-189 (Jail) C J.P.R./9-94

CrA 2173/98

CF0000059806

(2)

D3 (Pg 1)

APPEAL OF PRISONER

No दण्डितबंदी क्र०- 1173/58 Name चिलभानसिंह "साहिबा"

Father's name कोलाई सिंह

Residence मुकाम-मुण्डा, थाना-जैतहरी Age 20 वर्ष

Sentenced to जिला-शहडोल (म०प्र०) on 31.07.98, माननीय न्यायालय,

Under Section 302 IPC / आजीवन कारावास by अपर सत्र न्यायाधीश, मनेंद्रगढ़, जिला-कोरिया (म०प्र०)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement _____

2 Date on which copy received _____

3 Date on which Appeal sent 27.08.1998

4 Whether the prisoner wishes to be represented or not हाँ

No दण्डितबंदी क्र०-1173/58 Name चिलभानसिंह पि० कोलाई सिंह

Confined in सर्किल Jail बिलासपुर (म०प्र०)

No. _____ Dated 27.08.1998

Forwarded to the रजिस्ट्रार महोदय, माननीय उच्च न्यायालय, जबलपुर (म०प्र०)

together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

जे० जेल बिलासपुर.

Superintendent

22.8.98

Jail

Date of receipt in _____ Office _____

Date of receipt of record to accompany the _____

Memo of Appeal to the Appellate court _____

No _____ Dated _____ 199 _____

Forwarded to the

Date of receipt in Appellate court _____

(P. T. O.)

(15)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 2173/98 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. : **Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Dhirendra Mishra, JJ.**

22-2-2007

Shri Abhay Tiwari, Advocate for the appellant.
Mr. Sudhir Bajpai, Dy. G.A. for the respondent/State.

Arguments heard.

Oral judgment dictated on Dais.

Per L.C.Bhadoo, J. :

This appeal is directed against the judgment of conviction and order of sentence dated 31.7.1998 passed by Additional Sessions Judge, Manendragarh, District Koria in S.T.No. 332/97, whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life.

Case of the prosecution in brief is that in the night of 23rd July 1997 at about 9.00 p.m. deceased Bhuneshwar along with Jagarnath (PW-5) went to the house of PW-2 Tarkeshwar Singh, at that time brother of Tarkeshwar namely Suryapratap and son of Tarkeshwar namely Kameshwar Singh were at their residence. After sometime PW-5 Jagarnath along with deceased Bhuneshwar came out of the house of Tarkeshwar Singh, at that time accused Chitrabhan @ Sahiba came holding battleaxe and attacked Bhuneshwar with it on his neck, as a result of which Bhuneshwar fell down and thereafter, Chitrabhan ran away. Being baffled Jagarnath entered the house of Tarkeshwar crying and informed Tarkeshwar, Suryapratap and Kameshwar Singh. On being

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XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.2173/98 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	informed by Jagarnath, Tarkeshwar, Suryapratap and Kameshwar came out of the house and saw that body of Bhuneshwar was lying in front of the house of Kameshwar, by that time he was already dead. The villagers were called and informed. On 24.7.1997 Devpratap (PW-8), brother of deceased, Tarkeshwar (PW-2) and Chowkidar went to the Police Station Chirmiri and lodged the report, whereupon Shri C.D. Singh, Inspector (PW-10) registered the Merg (Ex.P/15). Based on that, First Information Report (Ex.P/1) was registered. Inspector Shri C.D. Singh left for the scene of occurrence and after giving notice to the Panchas, inquest (Ex.P/8) of the dead body of Bhuneshwar was prepared. Bloodstained and plain soil was taken into possession under Ex.P/10. Accused while in police custody gave memorandum on 25.7.1997 regarding the weapon of offence i.e. battleaxe and in pursuance of that, the battleaxe was taken into possession under Ex.P/12. Body of deceased was sent for postmortem examination to Community Health Center, Chirmiri where Dr. A.K. Agrawal (PW-4) conducted postmortem and prepared the postmortem report (Ex.P/4) in which he opined that cause of death is shock due to hemorrhage as a result of injury and the same is homicidal. The battleaxe was sent to the doctor for his opinion and the doctor gave his opinion (Ex.P/5) and opined that injuries found on the body of Bhuneshwar could be caused by the battleaxe. After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Manendragarh who committed the case to the Sessions Judge, Ambikapur from where learned Additional Sessions Judge, Manendragarh received the case on transfer for trial.	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.2173/98 **सन्** ~~200~~—

आदेश पत्रक (पूर्वानुबद्ध)

अद्देश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	The prosecution in order to establish the charge against the accused/appellant examined 12 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he has not committed the murder of Bhuneshwar, at the time of commission of offence he was working as labourer with Tarkeshwar and he is not aware as to who committed the murder of Bhuneshwar as he is outsider, therefore, merely on the basis of suspicion he has been implicated in the crime. Learned Additional Sessions Judge after hearing counsel for the respective parties convicted and sentenced the accused as aforementioned. We have heard Shri Abhay Tiwari, learned counsel appearing for the accused/appellant and Shri Sudhir Bajpai, learned counsel for the State/respondent. Shri Tiwari, has not disputed the homicidal death of Bhuneshwar. Moreover, from the ocular evidence of PW-5 Jagarnath and medical evidence of PW-4 Dr. A.K. Agrawal, it is established that the death of Bhuneshwar was homicidal in nature. As far as involvement of the accused/appellant in crime in question is concerned, Shri Tiwari argued that in fact the witness Jagarnath (PW-5) attacked the deceased and the accused/appellant has been falsely implicated in the crime.	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.217/98 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

On the other hand, learned counsel for the State/respondent supported the impugned judgment of the trial Court.

In order to appreciate the argument advanced by learned counsel for the accused/appellant, we have perused the evidence of PW-5 Jagarnath. This witness has stated that in the night of 23rd July 1997 at about 8.30 p.m. deceased Bhuneshwar Singh came to his house and said "let us go to the house of Tarkeshwar", therefore, they went to the house of Tarkeshwar Singh. As soon as they came out of the house of Tarkeshwar Singh, accused/appellant Chitrabhan came with battleaxe and attacked Bhuneshwar, as a result of which he fell down and accused/appellant Chitrabhan ran away from there. He (Jagarnath) being frightened raised cries, entered the house of Tarkeshwar Singh and informed Tarkeshwar, Kameshwar and Suryapratap. In the cross-examination he has stated that 2-3 months prior to the date of incident in the marriage of his sister Sunita, some quarrel took place between accused Chitrabhan and deceased Bhuneshwar Singh. He has stated that it is incorrect to say that he has falsely implicated the accused in the commission of murder of Bhuneshwar Singh lest he should be implicated in the murder of Bhuneshwar. Nothing has been brought on record in the cross-examination of this witness to show that in fact, this witness attacked the deceased and there was any reason for this witness ~~witness~~ to attack the deceased. In the cross-examination of other witnesses also the defence has not been able to elicit any circumstance by which it can be held that Jagarnath (PW-5) was the person who attacked deceased Chitrabhan and caused his death. The accused/appellant in his statement under Section 313 of the Cr.P.C. has stated that at the time of commission

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.2173/99 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of the offence, he was working with Tarkeshwar Singh in whose house deceased and this witness went and even Tarkeshwar Singh has not stated that Jagarnath attacked the deceased. Moreover, the accused himself in his statement under Section 313 Cr.P.C. has not stated that Jagarnath attacked the deceased and he has been falsely implicated in the crime by Jagarnath. He has stated that he is a resident of village Munda District Shahdol, on the date of incident he was working with Tarkeshwar Singh and he is not aware of the fact as to who committed the murder of Bhuneshwar and he has been falsely implicated in the crime on the basis of suspicion because he is a outsider. Thus, we do not find any substance in the arguments advanced by learned counsel for the accused/appellant as the evidence of Jagarnath (PW-5) is very clear, cogent and does not suffer from any infirmity and the same inspires confidence of the Court. Therefore, the trial Court has rightly placed reliance on the evidence of this witness.

In the result, the appeal being devoid of merit is liable to be dismissed and is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

P.T.O.